IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 21225 of 2006(B)

AGAINST THE ORDER DATED 29/07/2006 IN IA 3039/2005. IN AS.53/2003 of III ADDL. DISTRICT COURT, TRIVANDRUM

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PETITIONER:

BABY SYMON,
AGED 47 YEARS, S/O.CHACKO VARGHESE,
MALAYIL HOUSE,KARUVALOOR VILLAGE,
PATHANAPURAM, NOW AT CHARIPURATHU HOUSE,
CHENGAMMANADU, KOTTARAKKARA.

BY ADV. SRI.PAUL MATHEW (PERUMPILLIL)
SRI.ANIL GEORGE
SRI.P.V.SREENIJIN
SMT.K.B.SONY

RESPONDENTS:

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1. JOSE JACOB,AGED 42 YEARS,
S/O.M.JACOB, T.C.NO.8/85, MANNIL HOUSE,
THIRUMALA P.O., THIRUVANANTHAPURAM.

*2. M.G.GEORGE, AGED 62 YEARS,
S/O.DANIEL GEORGE, MANNUKOYICKAL, KONNI P.O.,
KONNI VILLAGE, PATHANAMTHITTA.

3. ABRAHAM GEORGE, AGED 38 YEARS,
S/O.GEORGE PANIKKAR,
T.C.4/267, KURNGANOOR MURI, KOWDIAR VILLAGE,
THIRUVANANTHAPURAM.

* THE 2ND RESPONDENT IS DELETED FROM THE ARRAY OF PARTIES, ON THE BASIS OF ORAL APPLICATION MADE BY COUNSEL FOR PETITIONER, AT THE RISK OF THE PETITIONER, AS PER ORDER DT.27.6.2007 IN THE WRIT PETITION.

R3 BY ADV. SRI.V.PHILIP MATHEWS
R1 BY ADV. SRI.SREELAL WARRIER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.21225/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.639/2000

EXT.P2 – TRUE COPY OF WRITTEN STATEMENT FILED BY PETR.

EXT.P3 – TRUE COPYOF JUDGMENT DT.30.11.02 IN O.S.639/00

EXT.P4 – TRUE COPYOF APPEAL MEMORANDUM DT.17.3.03 FILED BY R1-PLAINTIFF BEFORE DISTRICT COURT, TRIVANDRUM.

EXT.P5 – TRUE COPY OF I.A.3039/05 FILED BY R1 BEFORE DO.

EXT.P6 – TRUE COPY OF OBJECTIONS FILED BY PETR.

EXT.P7 – TRUE COPY OF ORDER DT.29.7.06 IN I.A.3039/05 IN A.S.53/03

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.21225 OF 2006

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DATED THIS THE 27TH JUNE, 2007

J U D G M E N T

Ext.P7 order by which the appellate court allowed an application for amendment of pleadings is under challenge in this Writ Petition under Article 227 of the Constitution. Mr.Paul Mathew, counsel for the petitioner submits that he has information that the appeal itself was disposed of subsequently by passing an order of remand to the trial court and that the trial court after remand dismissed the suit for default. Whatever that be, in view of the obvious position that Ext.P7 is only an order allowing an amendment application in the appeal and the appeal itself has been disposed of, the remedy open to the petitioner is to challenge the appellate judgment and decree in appropriate proceedings since Ext.P7 has merged into the appellate judgment.

Giving liberty to the petitioner to challenge the appellate judgment and decree in appropriate proceedings, this Writ Petition will stand disposed of. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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